

ARMED FORCES TRIBUNAL
REGIONAL BENCH, KOLKATA

O. A. No. – 135/2017

No. 14256527F Naik Uttam Kumar Mukherjee (Retd) Applicant.

Versus

Union of India & Ors. Respondents

For the Applicant : Mr. MM Bhattacharyya, Ld. Advocate

For the Respondent : Mr. Arunava Ganguly, Ld. Advocate

CORAM :

HON'BLE MS JUSTICE ANJANA MISHRA, MEMBER (J)

HON'BLE LT GEN BOBBY CHERIAN MATHEWS, MEMBER (A)

O R D E R

04.05.2022

1. The M. A. No. 98/2017 for Condonation of Delay filed in the connected O. A. is allowed.
2. The Applicant was enrolled in the Indian Army (Corps of Signals) on 31.03.1984 and was invalided out of service on 31.10.1984 in the rank of Naik after completion of 10 years and 07 months of qualifying service.
3. At the time of invalidment, the Applicant was brought before the Release Medical Board (RMB) at 148 Base Hospital on 08.10.1984. His RMB assessed the Applicant's Disability as Aggravated by Military Service and percentage of Disability was 30 % for two years from 01.11.1984 to 07.10.1987 (Aggravated) and from 08.10.1987 to 10.09.1999 @ 20 % (Aggravated) vide AFMSF-17 (Medical Board Proceedings) dated 01.07.1999 (Page-26 of the O. A.) for Low Back Ache. But, the Pension Sanctioning Authority i.e., Principal Controller of Defence Accounts (Pensions), Allahabad granted only 20 % of Disability Element of Disability Pensions for three years from 01.1.1984 to 07.10.1987 only. The Applicant after three years approached Resurvey Medical Board (RSMB) to 11.11.1987. The aforesaid RSMB assessed the Applicant's percentage of Disability at 20 % for 10 years only. But, the PCDA (P), Allahabad overruling the findings of the RSMB

granted his Disability Element of Disability Pensions for two years only. Then after two years, the Applicant was brought before the RSMB on 05.07.1999. According to the Surgical Specialist, the Applicant's Disability remained unchanged. Again, PCDA (P) Allahabad overruled the opinion of Command Hospital, Eastern Command, Kolkata and fixed the percentage of Disability for Disability Pension to 11-14 %. Again the Applicant after five years was brought before the RSMB on 07.01.2004 and his percentage of Disability remain unchanged. The Applicant's Disability Element of Disability Pension for life was rejected.

4. We have heard the Ld. Counsel for the Applicant as well as the Respondents and perused the documents placed on records.

5. The following facts are germane to this case : -

(a) The Applicant was invalided out of service on 31.10.1994 after serving 10 years and 7 month before completing terms of engagement.

(b) The Applicant was in receipt of Disability Element of Pension upto 07.07.2004 vide AFMSF-17 dated Nov 2003 by MH, Jabalpur (Page-30 of the O. A.).

6. The issues which are needed to be determined are : -

(a) Whether, the Applicant is entitled to "Disability Pension". The extent provision vide Entitlement Rules for Casualty Pensionary Award 1982 clearly states that any individual invalided out of Service in a Medical condition lower than at the time of enrollment is entitled to Disability Pension. The Applicant was invalided out of Service consequent to injuries suffer in the course of Military Service and is eligible for continued Disability Element of Disability Pension for life. The Hon'ble Supreme Court Judgement in C. A. No. 5605/2010 in Sukhwinder Singh Vs. UoI decided on 25.6.2014 squarely covers this aspect.

(b) Level of Disability Element. The issue has already been decided by the Hon'ble Supreme Court in Civil Appeal No. 5605/2010 in **Sukhwinder Singh Vs. UoI** decided on 25.06.2014, wherein it has been declared that any individual Invalidated out of Service is eligible for Disability Element of

Disability Pension presumed to be above 20% would be rounded off to 50 %.

(c) Action of PCDA (P), Allahabad. The action of the PCDA (P), Allahabad in interfering with the considered opinion of the Duly Constituted Medical Board is clearly ultra vires. Such action clearly indicates lack of empathy and causes avoidable mental and financial trauma to retired personnel of the Armed Forces. Respondents need to initiate steps for remedial recourse.

7. Regarding Broad Banding of benefits of Disability Element of Disability Pension, we find that Hon'ble Supreme Court in **UoI & Anr. Vs. Ram Avatar** in Civil Appeal No. 418 of 2012 decided on 10.12.2014 observed that individual similarly placed as the Applicant are entitled to rounding off of Disability Element of Disability Pension.

8. In fine, we direct the following : -

(a) Disability Element of Disability Pension @ 20 % to be paid to the Applicant wef. 11.11.1999 duly rounding off for life with arrears thereof.

(b) Broad Banding benefit of Disability Element of Disability Pension be paid to the Applicant from 20 % to 50 %.

9. Accordingly, this O. A. Is allowed. The Applicant shall be entitled to Disability Element of Disability Pension @ 20 % for life w.e.f. 11.11.1999 duly Broad Banded. Let arrears of Disability Pension be paid to the Applicant within a period of four months from the date of receipt of this Order; failing which the Respondents shall pay interest @ 8 % p. a.

10. No order as to costs.

(LT GEN BOB BY CHERIAN MATHEWS)
MEMBER (A)

(JUSTICE ANJANA MISHRA)
MEMBER (J)